

UNITED STATES OF AMERICA
UNITED STATES COAST GUARD vs.
MERCHANT MARINER'S DOCUMENT
Issued to: Neil A. HALPIN 243961

DECISION OF THE VICE COMMANDANT
UNITED STATES COAST GUARD

2510

Neil A. HALPIN

This appeal has been taken in accordance with 46 U.S.C. SS7702 and 46 CFR SS5.701.

By an order dated 9 January 1989, an Administrative Law Judge of the United States Coast Guard at Jacksonville, Florida suspended Appellant's Merchant mariner's License for three months remitted on twelve months probation upon finding proved the charge of misconduct.

The charge was supported by a single specification alleging that, on or about 17 February 1988, Appellant, under the authority of his license, wrongfully operated the M/V PRESIDENTIAL SUITE II with more than six passengers without a Certificate of Inspection.

The hearing was held at Jacksonville, Florida on 21 December 1988. Appellant appeared and was represented by professional counsel. Appellant submitted an answer of "no contest" to the charge and specification. Appellant filed no motions or objections. Accordingly, the Administrative Law Judge found the charge and specification proved without presentation of evidence by the Investigating officer as permitted by 46 C.F.R. SS5.527.

The Administrative Law Judge issued his written Decision and Order on 9 January 1989. The record and administrative case file fails to confirm when the Decision and Order was served on Appellant, however, Appellant, in his notice of appeal states that the Decision and Order was delivered to him postmarked 29 June 1989.

On 1 August 1989, Appellant submitted a pro se notice of appeal to the Commandant. This submission outlined in some detail three bases of appeal and meets the basic requirements of an appellate brief set forth in 46 C.F.R. SS5.703. Since the exact date that the Decision and Order was served on Appellant cannot be confirmed, Appellant's submission, received by the Commandant on 1 August, 1989, must be considered as timely.

Accordingly this matter will be considered to be properly before the Vice Commandant for disposition.

FINDINGS OF FACT

Appellant is the holder of the above-captioned license authorizing him to serve as an operator of inspected vessels not more than 25 gross tons upon the inland waters of the United States. AT all times relevant, Appellant was serving as the operator of the M/V PRESIDENTIAL SUITE II under the authority of the above captioned license.

On or about 17 February 1988, Appellant operated the M/V PRESIDENTIAL SUITE II without a Certificate of Inspection on the St. John River, Florida, a navigable water of the United States. AT that time, a party of approximately 25 passengers was carried aboard the vessel pursuant to an agreement with the owner of the vessel, Presidential Suite Charters, Inc. Under the provisions of 46 C.F.R. SS176.01-(a), a vessel carrying more than six passengers is required to have a Certificate of Inspection.

Appearance: Gary A. Bubb, Esq., P.O. Box 1500, Jacksonville,
Florida 32201

BASES OF APPEAL

This appeal has been taken from the order of the Administrative Law Judge dated 9 January 1989. Appellant asserts in his appeal that:

1. Appellant was never aboard the M/V PRESIDENTIAL SUITE II at the time of the violation;
2. Appellant's counsel failed to provide adequate representation;
3. A prospective Government witness at the hearing was not present on the M/V PRESIDENTIAL SUITE II at the time of the violation.

OPINION

Appellant's assertions are not properly raised on appeal. At the hearing, Appellant, represented by professional counsel, raised no objection to the charge and specification. Appellant was fully advised of his procedural due process rights.

Additionally, Appellant was advised that by pleading "no contest" the Administrative Law Judge could find the specification proved without further evidence. [TR pp 5-11]. In accordance with the provisions of 46 C.F.R. +5.527(c), the Administrative Law Judge was correct in finding proved the charge and specification without further evidence after the plea of "no contest." The record reflects that Appellant's plea was providently made.

All non-jurisdictional defects and defenses such as those raised by Appellant are waived by his provident pleas at the hearing. Appeal Decision 2462 (ARMSTEAD); Appeal Decision 2385 (CAIN), aff'd sub nom. Commandant v. Cain, NTSB Order EM-125 (1985); Appeal Decision 2376 (FRANK); Appeal Decision 2362 (ARNOLD); Appeal Decision 2268 (HANKINS); Appeal Decision 1203 (DODD).

Title 46 C.F.R. +5.701(b) provides that the only matters which will be considered on appeal are (1) rulings on motions or objections which were not waived at the hearing; (2) clear error; and (3) jurisdictional questions. The record of the proceedings reflects no clear errors, jurisdictional questions or novel policy matters.

The assertions made by Appellant present issues which could have been raised at the hearing through a timely motion or objection. Having been afforded every opportunity by the Administrative Law Judge to raise these issues at the hearing, Appellant effectively waived these matters and is now precluded from raising them on appeal.

CONCLUSION

The findings of the Administrative Law Judge are supported by substantial evidence of a reliable and probative nature. The hearing was conducted in accordance with the requirements of applicable law and regulations.

ORDER

The decision and order of the Administration Law Judge dated on 9 January 1989 at Jacksonville, Florida is AFFIRMED.

MARTIN H DANIELL
Vice Admiral, U.S. Coast Guard
Vice Commandant

Signed at Washington, D.C., this 6th day of September, 1990.

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13. APPEAL AND REVIEW

13.10 Appeals

Non jurisdictional defects not reviewable on appeal
when waived at hearing

3. HEARING AND PROCEDURE

3.44 Due Process

No denial of when provident plea made and accepted
No denial of absent clear error when objections/
motions waived at proceeding.
No denial when fully advised of procedural rights

3.83 Plea/Answer

Provident plea of No Contest precludes appeal
be weighed by ALJ

CITATIONS

Appeal Decisions cited: 2462 (ARMSTEAD); 2385 (CAIN); 2376
(FRANK); 2362 (ARNOLD); 2268 (HANKINS); 1203 (DODD).

NTSB Cases Cited: Commandant v. Cain, NTSB Order EM-125
(1985).

Federal Cases Cited: NONE

Statutes & Regulations Cited: 46 USC 7702, 46 CFR ÷5.701(b); 46
CFR ÷5.527(c); 46 CFR ÷176.01-(a); 46 CFR ÷5.703.

***** END OF DECISION NO. 2510 *****